

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NADENE SAMMANN, *et al.*,

Plaintiffs,

v.

ESTATE OF ELIZABETH SAMMANN,
et al.,

Defendants.

Case No. C05-0929L

ORDER DENYING MOTION
FOR ENLARGEMENT OF
TIME TO SERVE DEFENDANTS
AND FOR COSTS

This matter comes before the Court on plaintiffs' motion for enlargement of time to serve defendants (Dkt. #34) and on plaintiffs' motion to recover the costs of service (Dkt. #45).

Plaintiffs request "an enlargement of time to serve the defendants and file proof of service." Plaintiffs' Motion for Enlargement at p. 1. However, defendants' counsel completed a waiver of service on November 14, 2005 "to relieve the court from the distraction of continued motions to address service of process by the Plaintiffs."¹

¹ Plaintiffs previously filed a motion for an extension of time to serve, which was granted, and a motion to serve by publication, which was denied.

1 Declaration of Alan Funk (Dkt. #37) at p. 1. Plaintiffs object to the waiver of service and
2 argue that they are entitled to a full 120 days to accomplish service. The issue is moot
3 now that defendants have completed the waiver of service.

4 Plaintiffs have also filed a motion to recover their costs of service. They allege
5 that on September 4, 2005, they sent defendants a box of documents, including a waiver
6 of service, but defendants refused the box without opening it. Plaintiffs allege that if
7 defendants had completed the waiver, they would not have been forced to expend over
8 \$800.00 in service fees. Plaintiffs, however, have filed proof that they served defendants
9 on September 1, 2005, before they sent the waiver. They cannot recover the costs of
10 service incurred before the waiver was sent. Furthermore, plaintiffs cannot recover the
11 costs of their subsequent unnecessary and misguided attempts at service, including
12 service by publication which was not authorized by the Court or the Federal Rules of
13 Civil Procedure.

14 Accordingly, plaintiffs' motion for enlargement of time to serve defendants (Dkt.
15 #34) and plaintiffs' motion to recover the costs of service (Dkt. #45) are DENIED.

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17 DATED this 5th day of December, 2005.

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20 Robert S. Lasnik
21 United States District Judge
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